IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 28653 of 2007(J)

PETITIONER:

JACOB MATHEW,
MADATHIL PUTHENPURAYIL HOUSE,
AYARKUNNAM VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.K.M.VARGHESE.

RESPONDENTS:
----

1. **KERALA STATE ELECTRICITY BOARD,**
   VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM,
   REPRESENTED BY ITS SECRETARY.

2. **SPECIAL OFFICER (REVENUE),**
   KERALA STATE ELECTRICITY BOARD,
   VYDYUTHI BHAVAN, PATTOM,
   THIRUVANANTHAPURAM.

BY ADV. SRI. P.P. THAJUDEEN FOR R1 & R2.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

= =

WP(C).No.28653 of 2007-J

= =

Dated this the 24th day of October, 2007.

JUDGMENT

Heard the learned counsel for the petitioner and the learned standing counsel for the Electricity Board.

2. The issue relates to the arrears due from the petitioner. In so far as the respondents are concerned, they gave finality by the issuance of Ext.P5 dated 1-8-1995 in which it was stated that the amount due from the petitioner as on that date, was Rs.82,006.50 towards arrears up to 31-8-1991, after giving credit to the amounts paid earlier towards penal interest up to 31-7-1995. This means that on 1-8-1995, if the petitioner wanted to pay off the entire outstandings by one payment, he needed to have paid only Rs.82,006.50 and on such payment, the entire arrears up to 31-8-1991 would

have been satisfied.

3. Instead, he wanted instalment facility and that was granted on condition that penal interest would continue to accrue at 24% per annum from 1-8-1995. Such interest could accrue only on the amount of Rs.82,006.50.

4. Acting on Ext.P5, certain remittances were made by the petitioner. Later, the parties reached this Court, the petitioner acting on Ext.P5. This means that the Board could not be permitted to turn down to say that Ext.P5 was wrong, particularly when it was not its contention in the earlier round of litigation before this Court that the amount shown in Ext.P5 was on a mistake.

5. However, when the matter stood reverted for consideration of the respondents under orders of this Court, Ext.P19 has been issued by taking the view that it was Rs.1,25,950.50 which was actually due and the statement in Ext.P5 that only an amount

of Rs.82,006.50 was due, was a mistake. It has to be immediately noticed that the Board had not taken any action to rectify the so-called mistake at any earlier point of time. That apart, the mistake is demonstrated by saying that when the payments are made to a creditor by a defaulter debtor, the amounts so paid would be adjusted first against interest and balance, if any, would be adjusted against the principal arrears. The fundamental law governing such adjustment in debtor-creditor relationship does not end with that. When the debtor pays the creditor without any agreement between them that it shall be adjusted towards principal, it is open to the creditor to adjust it towards interest. But that does not necessarily mean that if the creditor adjusts that amount towards the principal, it becomes a mistake. The right to adjust and the volition as regards adjustment is a matter within the rights of the creditor and once the creditor gives the adjustment towards principal without adjusting it towards interest, it cannot be heard to say that the adjustment towards principal

was against the principle of law. Therefore, the stand taken in Ext.P19 that the crediting of the amounts paid prior to Ext.P5 towards principal and not interest was a mistake, does not, by itself, stand. This is all the more so because, such credit was made by the respondents themselves and not at the instance of the petitioner. Under such circumstances, Ext.P19 in so far as it adjusts the quantum of the amount recovered from the petitioner in terms of Ext.P5 cannot stand.

For the foregoing reasons, Ext.P19 is quashed and the parties are directed to work out the amounts due in the following terms:

1. The total amount due from the petitioner towards arrears up to 31-8-1991, as on 1-8-1995, shall stand fixed as Rs.82,006.50.

2. The interest on the aforesaid amount of Rs.82,006.50 shall run at the rate of 24% per annum.

3.The remittances received from the petitioner towards the arrears up to 31-8-1991, after the issuance of Ext.P5, shall be given due credit by first adjusting those amounts against the interest that would accrue as on the date of each of such remittances and the balance should be credited against the principal amount.

4.By re-consideration of the account, as afore-directed, the final amounts due from the petitioner shall be arrived at and the petitioner shall pay such amounts also.

5.The calculation of the aforesaid amounts shall be done by the Special Officer (Revenue), following this judgment, within an outer limit of three weeks of receipt of a copy of this judgment. The amounts so fixed shall be paid by the petitioner within three weeks of communication of the quantification

of the amounts by the Special Officer (Revenue). If he makes such remittance, no further interest shall accrue and the arrears shall be treated as wiped out.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/